Supreme Court, U.S.
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No. 93-1916

In The

Supreme Court of the United States

October Term, 1994

STEVEN L. ROSA (deceased), CHRISTINA ROSA, JOSHUA ROSA, AMBER ROSA, and NATHANIAL ROSA,

Petitioners,

v.

WARNER ELECTRICAL CONTRACTING, COLORADO COMPENSATION INSURANCE AUTHORITY, and THE INDUSTRIAL CLAIM APPEALS OFFICE OF THE STATE OF COLORADO,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Colorado

REPLY BRIEF FOR THE PETITIONERS

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I

This case raises the question of whether it is for Congress or the states to decide when the states may reduce their otherwise payable public assistance benefits on the basis that federal benefits are also payable to the same person.

If this power lies with Congress rather than the states, it would seem that the states could not act unless Congress expressly or by necessary implication tells them

they may do so. Furthermore, where some offsets are authorized, those which are not mentioned in the authorization would be forbidden under the doctrine of "expressio unius est exclusio alterius" – the inclusion of one is the exclusion of others. *National Railroad Passenger Corporation v. National Association of Railroad Passengers,* 414 U.S. 453, 458 (1974).

Conversely, if it is for the states to decide whether state and federal benefits duplicate each other to the extent that only federal benefits should be paid, the states would not need express Congressional permission and could enact offset statutes at will unless Congress expressly forbids them.

The effect of recognizing this power at either the state or federal level will be significant: If it resides with the states, they can shift a significant portion of the social welfare burden to the federal government without Congress' approval. This in turn shifts a significant portion of social welfare policy making to the states since they are reducing their programs while increasing those funded by the federal government.

Since the propriety of this shift, as well as the question of where the power lies to make it, is not settled, it should be determined in this case on certiorari. This will provide guidance to Congress and the several state legislatures as to their respective powers and the validity of a number of social welfare and retirement benefit laws.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the petition for certiorari, this Court should issue a writ of certiorari to review the January 31, 1994, judgment and opinion rendered by the Supreme Court of Colorado in this case and resolve a significant issue which concerns the relationships between state and federal governments and the public assistance benefits which they pay or mandate others to pay.

Respectfully submitted,

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